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**Follow-up to and implementation of the outcomes of United Nations summits, in particular the United Nations Conference on Sustainable Development, and major intergovernmental meetings of relevance to the United Nations Environment Assembly**

**Budget and programme of work for the biennium 2016–2017 and the Environment Fund and other budgetary matters**

# Amendments to the Instrument for the Establishment of the Restructured Global Environment Facility

## Report of the Executive Director

*Summary*

Upon the recommendation of the Council of the Global Environment Facility (GEF) at its forty-sixth meeting, the Fifth GEF Assembly, in May 2014, approved amendments to the Instrument for the Establishment of the Restructured Global Environment Facility such that:

(a) GEF will operate as one of the entities comprising the financial mechanism of the Minamata Convention on Mercury; and its responsibilities with regard to the conventions that it serves have been clarified;

(b) The "ozone layer depletion" and "persistent organic pollutants" focal areas have been replaced with a "chemicals and waste" focal area;

(c) The eligibility criteria for accessing GEF funding have been updated;

(d) The name of the GEF Evaluation Office has been changed to GEF Independent Evaluation Office.

The amendments approved by the Fifth GEF Assembly will become effective after their final adoption by the governing bodies of the GEF implementing agencies (the United Nations Development Programme, the United Nations Environment Programme and the World Bank). The United Nations Environment Assembly may therefore wish to consider the information contained in the present report and adopt the amendments to the Instrument.

* UNEP/EA.1/1.

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# I. Suggested action by the United Nations Environment Assembly of the United Nations Environment Programme

1. The United Nations Environment Assembly may wish to consider the adoption of a decision along the lines suggested below:

*The United Nations Environment Assembly,*

*Recalling* its decision SS.IV/1 of 18 June 1994 on the adoption of the Instrument for the Establishment of the Restructured Global Environment Facility (hereinafter "the Instrument"),

*Recalling also* the approval in May 2014 by the Fifth Assembly of the Global Environment Facility of a number of amendments to the Instrument relating to the GEF being available to operate as one of the financial mechanisms of the Minamata Convention on Mercury; to replace the "ozone layer depletion" and the "persistent organic pollutants" focal areas with a "chemicals and waste" focal area; to update the eligibility criteria for accessing GEF funding; and reflect the change of the name from GEF Evaluation Office to GEF Independent Evaluation Office,

*Having taken note* of the report of the Executive Director,[1]

1. *Decides* to adopt the following amendments to the Instrument, pursuant to the decision of the GEF Assembly in May 2014 (agenda Item 5):

(a) The amendment to paragraph 6 of the Instrument by which the Global Environment Facility shall serve as one of the financial mechanisms of the Minamata Convention on Mercury;

(b) The amendment to bullets (a), (b), (c) and (d) of paragraph 6 of the Instrument in order to clarify the GEF responsibilities under the conventions it serves in an orderly fashion;

(c) The amendment to paragraph 2 of the Instrument inviting the GEF to revise its focal area structure and strategy to address the chemicals and waste agenda, and that the "ozone layer depletion" and "persistent organic pollutants" focal areas will be replaced by the "chemicals and waste" focal area;

(d) The amendment to paragraph 9 of the Instrument, by which the eligibility criteria for access to GEF funding is updated to accommodate updates to eligibility criteria in the World Bank on financing, and in the United Nations Development Programme technical assistance;

(e) The amendment to paragraph 11 of the Instrument, by which the Facility shall have an Assembly, a Council and a Secretariat including an independent evaluation office;

(f) The amendments to paragraph 21 of the Instrument, by which the functions of the independent evaluation office are further clarified;

2. *Requests* the Executive Director to consider ways of enhancing the capacity of the United Nations Environment Programme, as the principal United Nations body in the field of the environment, to strengthen its role as implementing agency of the Global Environment Facility;

3. *Also requests* the Executive Director to transmit the present decision to the Chief Executive Officer and Chairperson of the Global Environment Facility.

# II. Background

2. The Global Environment Facility (GEF) Assembly consists of representatives of all GEF member countries (also referred to as "partici, ants"). Pursuant to paragraph 34 of the Instrument, amendments to the Instrument may be approved by consensus by the GEF Assembly upon recommendation of the Council, after taking into account the views of the GEF implementing agencies (the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP) and the World Bank) and the Trustee, and become effective after their adoption by the implementing agencies and the Trustee in accordance with their respective rules and procedural requirements.

[1] UNEP/EA.1/9.

3. Annexes IV to VI to the note by the secretariat (UNEP/EA.1/INF/21) contain the background documents submitted to the GEF Council at its forty-sixth meeting and the Fifth GEF Assembly, held in Cancun, Mexico, from 25 to 29 May 2014, to support consideration of the above-mentioned amendments to the Instrument. The documents include the official record of the Assembly decision adopting the amendments and a letter from Ms. Naoko Ishii, Chief Executive Officer and Chairperson of GEF, dated 2 June 2014 and addressed to the Executive Director of UNEP, explaining that the Fifth GEF Assembly in May 2014 approved, by consensus, amendments to the Instrument and invited the GEF Chief Executive Officer and Chairperson to request the implementing agencies and Trustee to adopt the amendments in accordance with their respective rules and procedures.

4. The amendments were discussed during the period 2013–2014 in GEF Council meetings prior to their approval by the Fifth GEF Assembly. Annexes I to III to the note contain the background documents and Council decisions pertaining to those discussions.

## III. Amendments

### Amendment 1
### The Global Environment Facility shall operate as one of the entities comprising the financial mechanism of the Minamata Convention on Mercury

5. The Conference of Plenipotentiaries of the Minamata Convention on Mercury, which adopted the Convention and opened it for signature in Kumamoto, Japan, on 10 October 2013, also adopted resolution 2 on financial arrangements, which invited the GEF Council to give effect to the inclusion of the GEF Trust Fund as a part of the financial mechanism of the Minamata Convention and to recommend to the Assembly of GEF, as a matter of urgency, that it make any adjustments to the Instrument for the Establishment of the Restructured Global Environment Facility that were necessary to allow it to fulfil its role in the financial mechanism.

6. This amendment to the Instrument responds to the invitation set out in resolution 2 of the Conference of Plenipotentiaries and to its adoption of the Minamata Convention.

7. The Executive Director welcomes the decision by the Conference of Plenipotentiaries and the resulting amendment to the GEF Instrument, noting that for the purposes of the Minamata Convention, the GEF Trust Fund shall be operated under the guidance of and be accountable to the Conference of the Parties to the Minamata Convention. The amendment adds a subparagraph to paragraph 6 of the Instrument, which is reflected in subparagraph (e) of the revised paragraph 6 (see para.10 below).

### Amendment 2
### Clarifying the responsibilities of the Global Environment Facility to each of the conventions it serves

8. Amendment 2 provides an opportunity, 20 years after the adoption of the Instrument, to further amend paragraph 6 of the Instrument in order to update and further clarify in an orderly fashion the responsibilities of GEF to each of the conventions it serves. These amendments clarify that:

(a) GEF shall function under the guidance of, and be held accountable to, the respective conventions;

(b) GEF shall provide resources to meet the agreed incremental costs of global environmental benefits and the agreed full costs of some or all enabling activities, depending on the relevant convention;

(c) The relevant decisions, articles and paragraphs are correctly referenced.

9. The Executive Director welcomes the decision of the GEF Assembly and the resulting amendment to the Instrument, in particular because they are consistent with the guidance provided by the conventions over the years and they further strengthen the relations between GEF and the conventions it serves.

10. The revised paragraph 6, incorporating these amendments reads as follows:[2]

In partial fulfilment of its purposes, the GEF shall:

(a) Operate the financial mechanism for the implementation of the United Nations Framework Convention on Climate Change (UNFCCC), on an interim basis, in accordance with such cooperative arrangements or agreements as may be made pursuant to paragraphs 27 and 31 of this Instrument. The GEF shall also be available to meet the agreed full costs of activities described in Article 12, paragraph 1, of the UNFCCC. The GEF shall be available to continue to serve for the purposes of the financial mechanism for the implementation of the UNFCCC if it is requested to do so by the Conference of the Parties pursuant to its Article 11, paragraph 4. In such respects, the GEF shall function under the guidance of, and be accountable to, the Conference of the Parties which shall decide on policies, rogramme priorities and eligibility criteria related to the UNFCCC pursuant to its Article 11, paragraph 1;

(b) Be, on an interim basis, the institutional structure which carries out the operation of the financial mechanism for the implementation of the Convention on Biological Diversity (CBD), in accordance with such cooperative arrangements or agreements as may be made pursuant to paragraphs 27 and 31 of this Instrument. The GEF shall be available to continue to serve for the purposes of the financial mechanism for the implementation of the CBD if it is requested to do so by the Conference of the Parties pursuant to its Article 21, paragraph 3. In such respects the GEF shall function under the guidance of, and be accountable to, the Conference of the Parties which shall decide on policies, rogramme priorities and eligibility criteria for the purposes of the CBD pursuant to its Article 21, paragraph 1;

(c) Be available to serve as an entity entrusted with the operation of the financial mechanism of the Stockholm Convention on Persistent Organic Pollutants. In such respects the GEF shall function under the guidance of, and be accountable to, the Conference of the Parties which shall decide on policies, strategy, rogramme priorities and eligibility criteria for the purposes of this Convention pursuant to its Article 13, paragraph 7(a);

(d) Be available to serve as a financial mechanism of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD), pursuant to Article 20, paragraph 2 (b), and Article 21 of the UNCCD. The Council shall consider and approve arrangements to facilitate collaboration between the GEF and the UNCCD and among countries with respect to affected countries, particularly Africa; and

(e) Operate as one of the entities comprising the financial mechanism of the Minamata Convention on Mercury, pursuant to its Article 13, paragraphs 5, 6 and 8. In such respects, the GEF shall operate under the guidance of, and be accountable to the Conference of the Parties, which shall provide guidance on overall strategies, policies, rogramme priorities and eligibility for access to and utilization of financial resources. In addition, the GEF shall receive guidance from the Conference of the Parties on an indicative list of categories of activities that could receive support; and shall provide resources to meet the agreed incremental costs of global environmental benefits and the agreed full costs of some enabling activities, pursuant to Article 13, paragraph 7, of the Minamata Convention on Mercury.

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[2] The current version of paragraph 6, without these amendments, reads:

6. (a) In partial fulfilment of its purposes, the GEF shall, on an interim basis, operate the financial mechanism for the implementation of the United Nations Framework Convention on Climate Change and shall be, on an interim basis, the institutional structure which carries out the operation of the financial mechanism for the implementation of the Convention on Biological Diversity, in accordance with such cooperative arrangements or agreements as may be made pursuant to paragraphs 27 and 31. The GEF shall be available to continue to serve for the purposes of the financial mechanisms for the implementation of those conventions if it is requested to do so by their Conferences of the Parties. The GEF shall also be available to serve as an entity entrusted with the operation of the financial mechanism of the Stockholm Convention on Persistent Organic Pollutants. In such respects, the GEF shall function under the guidance of, and be accountable to, the Conferences of the Parties which shall decide on policies, programme priorities and eligibility criteria for the purposes of the conventions. The GEF shall also be available to meet the agreed full costs of activities under Article 12, paragraph 1, of the United Nations Framework Convention on Climate Change.

(b) The GEF shall be available to serve as a financial mechanism of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (UNCCD), pursuant to Article 20, paragraph 2(b), and Article 21 of the Convention. The Council shall consider and approve arrangements to facilitate collaboration between the GEF and the UNCCD and among countries with respect to affected countries, particularly Africa.

## Amendment 3
## Replacing the "ozone layer depletion" and "persistent organic pollutants" focal areas with a "chemicals and waste" focal area

11. The GEF Instrument, in paragraph 2, identifies persistent organic pollutants and ozone-depleting substances as two separate focal areas. Pursuant to the consultative process on financing options for chemicals and waste, launched by the UNEP Executive Director at the fourth meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants, and UNEP Governing Council decision 27/12, on chemicals and waste management, in which the Council invited the Facility to revise its focal area structure and strategy in order to address the chemicals and wastes agenda and to consider ways of further strengthening its relations with the conventions it serves as a financial mechanism. In its resolution III/1, on financial and technical resources for implementation of the Strategic Approach to International Chemicals Management, the International Conference on Chemicals Management, at its third session, held in September 2012, invited GEF in the process of the sixth replenishment of its trust fund to consider the priorities and activities identified in the Strategic Approach in support of the achievement of its objectives.

12. The GEF Assembly therefore, upon the recommendation of the GEF Council, approved an amendment to paragraph 2 of the instrument to delete subparagraphs (e) and (f) and replace them with a new subparagraph (e). Paragraph 2 would read as follows:

> The GEF shall operate, on the basis of collaboration and partnership among the Implementing Agencies, as a mechanism for international cooperation for the purpose of providing new and additional grant and concessional funding to meet the agreed incremental costs of measures to achieve agreed global environmental benefits in the following focal areas:
>
> (a) Biological diversity;
>
> (b) Climate change;
>
> (c) International waters;
>
> (d) Land degradation, primarily desertification and deforestation;
>
> (e) Chemicals and waste.

13. The Executive Director welcomes the decision of the GEF Assembly and the resulting amendment to the Instrument.

## Amendment 4
## Updating the eligibility criteria for accessing Global Environment Facility funding

14. The second sentence of paragraph 9 (b) of the Instrument reads:

> A country shall be an eligible recipient of GEF grants if it is eligible to borrow from the World Bank (IBRD and/or IDA) or if it is an eligible recipient of UNDP technical assistance through its country Indicative Planning Figure (IPF).

15. Since the establishment of the Instrument, however, the criteria of eligibility under the World Bank and UNDP have changed. The World Bank International Development Association (IDA) introduced grants for a select group of low-income countries during its twelfth replenishment period (2000–2002). Furthermore, the UNDP regular resource allocations for country-level programme activities are made within the framework of targets for resource assignments from the core (TRACs). TRAC-1 refers to the annual level of regular programme resources targeted to be available for an individual programme country during the programming period. TRAC-2 was designed to provide the Administrator with the flexibility to allocate regular programme resources to high-impact, high-leverage and high-quality programme activities and to help UNDP to respond effectively to differentiated country needs (decision 2013/4).

16. The GEF Assembly, in consultation with the GEF Council, therefore approved an amendment to the relevant text in paragraph 9 (b) as follows:[3]

> A country shall be an eligible recipient of GEF grants if it is eligible to receive World Bank (IBRD and/or IDA) financing or if it is an eligible recipient of UNDP technical assistance through its target for resource assignments from the core (specifically TRAC-1 and/or TRAC-2).

17. The Executive Director welcomes the decision of the GEF Assembly and the resulting amendment to the Instrument so as to update eligibility requirements under GEF.

## Amendment 5
## Amending paragraphs 11 and 21 of the Instrument relevant to the evaluation function of the GEF

18. The GEF Council meeting in November 2013 agreed to change the name of the GEF Evaluation Office to Independent Evaluation Office, and recommended to the GEF Assembly in 2014 the revision of paragraph 11 to include a reference to the Independent Evaluation Office as follows :

> The GEF shall have an Assembly, a Council and a Secretariat including an independent evaluation office.

19. Furthermore, the Council recommended to the GEF Assembly in 2014 the revision of paragraph 21 of the Instrument to include a new subparagraph 21 (i) that asserts the independence of the evaluation function, as follows, and adjusts the numbering of subsequent paragraphs:

> There shall be an independent evaluation office headed by a director, appointed by and reporting to the Council, whose responsibility it is to carry out independent evaluations consistent with decisions of the Council.

20. The Executive Director welcomes the decision of the GEF Assembly and the resulting amendment to the Instrument that asserts the independence of the evaluation function of the GEF.

21. The note by the Secretariat (UNEP/EA.1/INF/21) provides the following documents in support of the information provided in the present report:

(a) Joint summary of the Chairs of the forty-fifth meeting of the Council of the Global Environment Facility (annex I);

(b) Document of the Council of the Global Environment Facility on proposed amendments to the Instrument (annex II);

(c) E-mail from the secretariat of the Global Environment Facility relating to proposed amendments to the Instrument (annex III);

(d) Document of the Assembly of the Global Environment Facility on proposed amendments to the Instrument (annex IV);

(e) Chair's summary of the Fifth Assembly of the Global Environment Facility (annex V);

(f) Correspondence from the Chief Executive Officer and Chair of the Global Environment Facility addressed to the Executive Director of the United Nations Environment Programme (annex VI).

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[3] The current version of subparagraph 9 (b), without the amendment, reads:

> All other GEF grants shall be made available to eligible recipient countries and, where appropriate, for other activities promoting the purposes of the Facility in accordance with this paragraph and any additional eligibility criteria determined by the Council. A country shall be an eligible recipient of GEF grants if it is eligible to borrow from the World Bank (IBRD and/or IDA) or if it is an eligible recipient of UNDP technical assistance through its country Indicative Planning Figure (IPF). GEF grants for activities within a focal area addressed by a convention referred to in paragraph 6 but outside the framework of the financial mechanism of the convention, shall only be made available to eligible recipient countries that are party to the convention concerned.